



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/169603

PRELIMINARY RECITALS

Pursuant to a petition filed October 23, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to FoodShare benefits (FS), a hearing was held on November 24, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the petitioner's appeal of her monthly FS benefits effective May 1, 2015 is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kelly Kosloske

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. The petitioner is a household of two. She lives with her child and her husband. Ordinarily this would be a household of three; however, both the petitioner and her husband are full time students. Full time students are generally not eligible for FoodShare (FS) benefits. Full time

students with children are eligible for FS benefits. Under the rules only one adult full time student is allowed per child. Thus, they are a household of two, not three.

3. The agency had previously calculated the petitioner's monthly FS benefits based upon a household size of three. The agency discovered this error, and recalculated the petitioner's monthly FS benefits as a household of two. This caused a reduction in the petitioner's monthly FS benefits. The petitioner receives the maximum amount of monthly FS benefits allowed for a household size of two.
4. On April 24, 2015 the agency sent the petitioner a notice stating that effective May 1, 2015 her monthly FS benefits would be reduced to \$357. Previously her monthly FS benefits were \$497 as a household of three. The notice stated that the petitioner had 90 days to file a Request of Fair Hearing.
5. On October 26, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

An appeal of a negative action concerning FS must be filed within 90 days of the negative action, once timely and adequate notice is given to the household. 7 C.F.R. § 273.15(g); see also Wis. Adm. Code §HA 3.05(3)(b). Failure to appeal within the 90-day limit means that the Division of Hearings and Appeals does not have jurisdiction to consider the merits of the appeal.

In this case the petitioner received the notice regarding the reduction of her monthly FS benefits in April 2015. She did not file a Request for Fair Hearing until October 2015. This is well beyond the 90 day statutory limit, and I am without jurisdiction.

If I had jurisdiction, the outcome of this appeal would be the same. The issue that the petitioner raises is the household size. Previously, the agency calculated her monthly FS benefits as a household consisting of herself, her husband, and her child. Both the petitioner and her husband are full time students. Full time students are generally ineligible for FS benefits. *FoodShare Wisconsin Handbook (FSW)* § 3.15.1. An exception to this rule is a person who is responsible for the care of a dependent household member under age 6. *Id.* This exception goes on to state that if 2 people exercising parental control are in the food unit, allow student status to only 1 person per child. *Id.* Thus, the agency properly calculated the petitioner's monthly FS benefits based on a household size of two. The petitioner receives the maximum monthly FS benefits for a household size of two.

CONCLUSIONS OF LAW

The petitioner's appeal is untimely, and I am without jurisdiction to decide the merits of the case.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of December, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 1, 2015.

Kenosha County Human Service Department
Division of Health Care Access and Accountability